

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1173309-D1
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Franklin Junior PABLO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1800

Franklin Junior PABLO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 24 October 1969, and Examiner of the United States Coast Guard at Mobile, Alabama, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as an ordinary seaman on board SS NORTHERN STAR under authority of the document above captioned, Appellant:

- (1) on 11 September 1969, refused to obey an order of the second mate of the vessel to participate in a fire and boat drill;
- (2) on 28 September 1969, refused to obey an order of the second mate to take the gangway watch;
- (3) on 28 September 1969, assaulted and battered the master of the vessel by striking with his hands;
- (4) on 28 September 1969, used profane and threatening language to the master; and
- (5) on 28 September 1969, created a disturbance on the vessel by brandishing a fire axe in a dangerous manner.

At the hearing, Appellant did not appear. The Examiner entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of NORTHERN STAR and the testimony of the master of the vessel.

Since Appellant did not appear there was no evidence entered on his behalf.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

The entire decision was served on 12 December 1969. Appeal was timely filed on 12 January 1970. Although Appellant had until 12 February 1970 to perfect his appeal he had added nothing to the material provided in his original notice.

FINDINGS OF FACT

On all dates in question, Appellant was serving as an ordinary seaman on board SS NORTHERN STAR and acting under authority of his document.

On 11 September 1969, at Surabaya, Indonesia, Appellant was ordered by the second mate to enter a lifeboat during a fire and lifeboat drill Appellant refused to obey the order and did not enter the boat.

On 28 September 1969, at Durban, South Africa, at about 1830, when Appellant was supposed to be on watch, the master observed the second mate knocking on the door of a crew forecabin. Appellant was ordered by the second mate to go to the gangway for his watch. Appellant addressed the mate with obscene and abusive language, refusing to obey the order.

The master intervened and ordered Appellant to obey the mate's order. Appellant struck the master with both hands and addressed obscene and threatening language to him. Crew members gathered and restrained Appellant, who continued to shout obscenities at all present.

After Appellant finally went to the gangway, the master received a report of a disturbance. When the master and the chief mate arrived on the main deck they saw Appellant entering the boatswain's room with a fire axe in his hands. When ordered to give up the axe Appellant refused to do so. The axe was forcibly taken from him.

When Appellant was read the log entry relative to the fire and boat drill, his reply was "Discrimination". Appellant is black. The chief mate and over sixty percent of the crew were black.

Appellant was regularly paid off with the rest of the crew at Mobile, Alabama, on 24 October 1969.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

- (1) the charges are not true,
- (2) the master was biased, and
- (3) a new hearing should be held at Portsmouth, Virginia.

APPEARANCE: Bashara & Hubbard, Norfolk, Virginia, by Charles V. Bashara, Esquire.

OPINION

I

Appellant, in support of his argument that he should be granted a new hearing at Portsmouth, Virginia, declares that he could not be "at the Mobile, Alabama, hearing because he was without funds."

The record shows plainly that Appellant was served with the notice of hearing on the day on which he was paid off from NORTHERN STAR. If a seaman ever has funds it is at the time of payoff.

The record also shows that Appellant was advised that his means of seeking change of venue to Portsmouth were to appear before the Examiner in Mobile and ask for it. It is doubtful that the change would have been granted since the needed witness, the master of the ship, was then in Mobile, as were all other members of the crew on the date of payoff.

Appellant also declares that if a re-hearing were ordered in Portsmouth he could obtain the testimony of three witnesses whose testimony he forfeited by not appearing as ordered on notice at Mobile. The three witnesses whom Appellant now wishes to call were available at Mobile at the time of service of notice of hearing upon Appellant. They were members of the crew who were paid off at that time. Appellant did not ask that these witnesses be placed under subpoena at the time of payoff.

II

The mere allegations that the charges are not true and that the master was prejudiced are not adequate grounds for appeal. The Examiner's findings are based on substantial evidence and there is no showing of bias on the part of the master.

CONCLUSION

The findings of the Examiner are based on substantial evidence, the testimony of the master of NORTHERN STAR, in addition to properly made log entries. No evidence to the contrary was even placed before the Examiner.

Appellant has offered no reason worthy of consideration for his failure to appear for his hearing. By his failure to appear he forfeited his right to present evidence. Any action other than affirmance of the Examiner's order in this case is unthinkable.

ORDER

The order of the Examiner dated at Mobile, Alabama on 24 October 1969, is AFFIRMED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 16th day of July 1970.

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